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‘Why can’t I have my baby tomorrow?’: A Legislative Periodisation of Intercountry Adoption in Victoria and Australia from the Early 1970s to the Present¹

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Abstract

Intercountry adoption involves relatively small and currently declining numbers. But it is a platform for Australia’s engagement with the wider world, and a highly contested field. Efforts to rationalise and regulate the field have to reconcile many competing interests, inside and outside Australia. This periodic overview focuses on government responses to the evolving practice of intercountry adoption from the end of the Vietnam War, charting the emergence of the current regulatory regime. It uses Victoria as a case study, to show the intricacies of a split state/federal jurisdiction, the challenge of transnational regulation in a globalised world, the flow-on effect of enabling legislation, and the impact of public scandals.

A few days before Christmas in 2013, then Prime Minister Tony Abbott announced the formation of an interdepartmental taskforce to review Australia’s adoption regulation regime, with a view to making it easier and quicker for Australians to adopt children permanently, both locally and from overseas.² Flanked by celebrity adoption advocate Deborra-lee Furness, her husband Hugh Jackman, and cycling champion Cadell Evans—all of whom are adoptive parents of children born in other countries—the Prime Minister spoke with feeling of the ‘millions of children in orphanages around the world who would love to have parents,’ and of the possibility that ‘thousands of those, maybe even tens of thousands of those could come to Australia.’³ The procedures for intercountry adoptions are too complex, he said, and these complexities are ‘putting people off’. State authorities in charge of processing such adoptions have different eligibility requirements, while the federal government has responsibility for immigration, citizenship, and the overseeing of arrangements with so-called ‘sending countries’ (the

children's countries of origin). Overarching the whole system are those obligations Australia has incurred through its ratification of international conventions such as the United Nations Convention on the Rights of the Child (CRC, 1989) and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague, 1993).

Intercountry adoption (ICA) is not a simple matter, rhetorically, procedurally, ethically or philosophically. As an international child welfare option, ICA is trapped within strongly held, but opposing, views.⁴ Within Australia, as elsewhere, ICA has been subject to more than its fair share of outside and political interference, and is constantly under pressure from parent groups. Controversial issues have been fought out against considerable and uninformed media and public involvement.⁵ Australian public policy related to ICA—the movement of children across national boundaries for the purposes of adoption—has had to take account of, and attempt to accommodate, the needs and motivations of a number of groups involved in the adoption process: State and commonwealth government authorities, Australian and overseas government agencies and child welfare bodies, volunteer (parent) groups, parent advocates and social welfare professionals, concerned individuals and children (and their families within Australia and in the countries of origin). Neither is this accommodation straightforward, as ICA attracts profoundly oppositional points of view, often represented dichotomously as a choice between a humanitarian alternative for children in situations of extreme deprivation, or a relic of colonial imperialism verging on kidnap.⁶

From the time of the first government involvement in ICA at the end of the Vietnam War, Australian government policies and attitudes have been criticised for impeding the humanitarian intentions of adoption advocates. Counter arguments deplore the simplistic idealism of the humanitarian approach by evoking the ongoing risk of child trafficking.⁷ Scandals involving the purchase/sale of children have accompanied ICA in Australia from as early as the Vietnam War period. Historian Joshua Forkert documents a 1973 interview on ABC Radio by Australian journalist and cameraman Neil Davis, alleging that there was a flourishing market involving children from Cambodia and Vietnam, and that some of these children had certainly made their way to Australia.⁸ Within the parliamentary system, policy makers must

represent the interests of their (at times) vociferous constituents, while acknowledging Australia's obligations under relevant international treaties and agreements. Added to this already potentially explosive mix of pressures and counter-pressures is the media's willingness to sensationalise particular cases in order to influence politicians and officers to achieve an end that may be outside policy.

Australia presently enjoys a reputation for stringent regulation, though this has not always been the case. There are now high levels of control over domestic procedures in relation to ICA, and significant legislative emphasis is placed on ensuring compliance with international standards of practice. Adoption advocates have deplored the rigorous regulatory climate as an official 'anti-adoption' culture that is reflected in the relatively low number of children adopted and the time taken to process applications.⁹ One might characterise the periodisation of ICA proposed in this article as representing a movement from chaos to control, but it should not be viewed as a triumphalist evolution. The nature of ICA is such that there are, and always will be, some elements of the process which are outside Australia's control. Legislative reform and review has always had the double purpose of addressing domestic issues (across the state-federal divide) and international concerns (across much more complex and complicated country-to-country boundaries). The pendulum swings between periods of intense focus on domestic issues and periods of international preoccupation.

Using Victoria as a case study, this article offers an overview of the *legislative* history of ICA in Australia as leading to the present regulatory regime. In so doing, it explores the intricacies of social welfare in a federal state, of state-federal jurisdiction more broadly and of the challenge of transnational regulation in a global world. It is not the purpose of the article to write a *social* history of ICA, though its origins in the Second World War and even earlier should be noted.¹⁰ Nor do we intend to engage with the complex political, ideological or wider economic issues affecting the removal of children from one country to another for the purposes of adoption, except insofar as these aspects of the practice have impacted on the formation of policy.¹¹ Scholars have argued that the imbalance in social and economic conditions between sending and receiving countries, a prerequisite to ICA, is in itself an offence to notions of social justice and human rights.¹² Or, as implied in the so-called principle of subsidiarity, that intercountry adoption is

not the most desirable form of permanent care for children in deprived circumstances, a principle articulated as early as 1956 in the 'Leysin principles', which have underpinned all national instruments dealing with intercountry adoption.¹³ The present article starts from the position that ICA, although in decline, is a reality of the modern world. Though the effects of the present interdepartmental review have yet to be fully known, Australian legislators have generally preferred to regulate and attempt to control this reality ethically rather than to adopt the hands-off position proposed by some vocal adoption advocates.

Broadly speaking, the development of ICA in Australia mirrors global trends, but with significant local variations. These result in part from the constitutional delegation of responsibilities across the states and territories, functioning as independent legislative entities, and the Commonwealth functioning as the body representing Australia in the world. Since adoption is a state matter administratively, and since confrontations, scandals, inquiries and reforms acted out in Victoria serve as a prototype for the other states, this study references Victoria as a sample state within the broader context of Commonwealth and state legislation and practice.

Various chronologies have been framed internationally to classify the development of ICA, with a view to capturing changing values and attitudes. Some accounts focus on the motivations of parents; others consider historical and social circumstances globally and domestically, or some combination of these two interconnected aspects.¹⁴ Issues of immigration and nation-building in receiving countries are juxtaposed against the distinct social and political contexts of sending nations.¹⁵ Whereas public discourse domestically has been dominated by parent advocates and complainants, other voices are making themselves heard. Australian involvement in an Indian adoption scandal in 2009 gave the public a rare opportunity to understand the grief of two birth families who lost children to ICA,¹⁶ while adult adoptee community activism and research has drawn attention in recent years to the complex personal and social negotiations involved in transnational adoptions for the children themselves.¹⁷ The conceptual basis of Alexandra Young's interpretation, which traces the development of ICA from a humanitarian response to a market-driven policy, is particularly apposite to the periodisation offered here, which focuses on Australian government responses to the evolving practice of ICA.¹⁸

Phase 1: 1972–1984: Rescue

It is commonplace to begin the narrative of modern ICA in Australia with the adoption of children from Vietnam (from 1968), culminating in ‘Operation Babylift’ (April 1975), a Commonwealth diplomatic initiative designed in part at least to assuage public criticism of the war and feelings of outrage at its effect on the civilian population, especially children.¹⁹ ICA imploded into the legislative environment at a time when adoption had recently become fully regulated. The Commonwealth-backed ‘Model Act’ of 1965, passed first in the Australian Capital Territory and consequently in the states, saw the state become the principal provider of adoption services, with private agencies subject to licensing.²⁰ The early efforts of ICA entrepreneurs cut across existing adoption regulation, reverting to an earlier pre-legislative model in which adoption was a matter of private negotiation and transaction. It should also be noted that the attention directed to Vietnam as a source of children in need of adoption coincided directly with a dramatic decrease in the numbers of babies available for adoption in Australia.²¹

Australia’s military intervention in the Vietnam War provided the initial impetus for the large-scale adoption of children from overseas. Interest in adoption increased significantly as public opinion toward the war turned from largely supportive to oppositional. Australian volunteers in Vietnam promoted adoption as an appropriate way to assist the thousands of Vietnamese children orphaned and abandoned as a result of the war. This conception of adoption was not supported by international welfare authorities, nor by all governments in Australia, but it was immensely popular.²² Forkert sees events in May 1972 as pivotal: the day that Elaine Moir confronted a reluctant federal government with the reality of five Vietnamese babies she had ‘smuggled’ into the country for adoption: ‘Here they are; do something!’²³

Moir’s action is also a dramatic starting point for the present narrative. In 1972, Moir was a Glen Iris resident with two adopted children of her own. She was a divorcee who had lived in Thailand, from where, after the breakup of her marriage, she had accompanied a Scandinavian couple to Vietnam where they were adopting a child. Although motivated initially only by curiosity, Moir was profoundly affected by the plight of the children and babies she observed in Vietnam. She became a passionate advocate of ‘rescue’.

Between November 1971 and March 1972, Moir completed proxy adoptions for five children in Vietnam on behalf of prospective Australian families, four of whom were located in Victoria. The children were granted South Vietnamese exit permits, but were refused entry to Australia by the Commonwealth Department of Immigration and by the Victorian minister for social welfare, Ian Smith, a passionate opponent of ICA. Proxy adoptions, which allowed prospective parents to adopt in a foreign country in absentia, were of great concern to child welfare professionals, because of the lack of regulation. Existing legislation covering recognition of foreign adoption orders, even where parents had never been approved or even rejected as adoptive applicants, allowed the possibility that legal recognition would be given to practices that were socially undesirable or even potentially illegal.²⁴ Such adoptions were not valid under the adoption laws of the Australian states. Moir described herself as law-abiding and as having no wish to embarrass the government, but her arrival at Mascot was stage-managed to promote confrontation. She organised the press to be at the airport so that the children would be photographed on Australian soil. She wanted the whole world to know about her action and public opinion to be so strong that the Australian government would not be able to send the children back. Faced with her *fait accompli*, the Minister of Immigration allowed the children to remain in Australia while efforts were made to meet legal requirements. The parents adopted a suitably defiant militant stance. Immediately pressing issues were how ICA was to be managed and by whom?

Existing adoption agencies were ambivalent, or even antagonistic, to the concept of ICA, and most refused to cooperate with the processing of applications by Australians to adopt children from Vietnam. Moir's exploit and the media attention she commanded forced reluctant governments to take action and responsibility. Confronted with the reality that children were coming to Victorian families for adoption, the Victorian adoption agencies established an ICA sub-committee in November 1973. Steps were taken to establish a specialised agency which would have guardianship of the child, once it was released for adoption, and until an order was made legalising that adoption under Australian law.²⁵ In the interim, the Child Care Service of the Methodist and Presbyterian (later Uniting) Churches was appointed to this role, and its director, Graeme Gregory, visited Vietnam in 1974 and 1975.

At the same time, prospective parents began to organise themselves. The adoptive parent group, Australian Adoptive Families Association, formed in South Australia in 1973, was responsible for bringing in most children adopted between 1973 and the end of 1974.²⁶ These were private or 'residential' adoptions (i.e. arranged without agency involvement or approval). The Victorian chapter of the story begins in September 1975 with the formation of a breakaway parent group taking the name of Australian Society for Intercountry Aid (Children) (ASIAC). The organisation had a membership of some 300 families by the last days of the Vietnam War, a 'hard core of couples determined to make ICA accepted'.²⁷ The critical role that these and other parent groups played in the early consolidation of ICA as a legitimised activity must be acknowledged; ASIAC claimed that the ICA program would not have begun had parents not worked to change attitudes and regulations.²⁸

The so-called Vietnam Babylift, which saw some 280 babies and children evacuated from Saigon to Australia in two airlifts early in April 1975, encapsulates the administrative conundrum surrounding ICA in the formative years. Was it to be viewed as a humanitarian immigration program, shaped by, and responsive to, national policy objectives and, therefore, a federal responsibility? Was it a service to the prospective adoptive children, or to infertile couples, and, therefore, an issue for the state governments? Forkert argues convincingly that the handling of the Babylift smacked more of political opportunism than genuine humanitarian concern for the victims of war—its propaganda value was certainly fully exploited by the Commonwealth government.²⁹ Once they had arrived in Australia and been photographed with federal politicians, including the prime minister Gough Whitlam, the babies were despatched to the states where local adoption authorities attempted to deal with the chaos surrounding their allocation and distribution.³⁰

The mass influx of Vietnamese babies caught Australian authorities almost completely unprepared, legally and logistically. There was no legislation in place to support transnational adoptions, though there was a system for approving prospective adoptive parents and limited recognition of 'foreign' adoptions (i.e. adoptions completed in overseas countries by Australians residing abroad) within existing adoption legislation. South Australian welfare professional Peter Fopp and others like him have described the chaotic situation in state welfare departments in dealing with the mass of applications: 'I understood how



Margaret Whitlam, wife of the Federal Opposition Leader, holds a young Vietnamese child at the Don Chua orphanage in Saigon in January 1968. With her is Father Olivier, a Catholic Redemptionist priest who established the orphanage in 1964. Mrs Whitlam was travelling with her husband on his tour of ten Asian countries. Photographer: Richard William Crothers, 1968. (Courtesy of the Australian War Memorial, CRO/68/0051/VN.)



Vietnamese orphans arrive at Melbourne Airport, 1976. (Courtesy of the National Archives of Australia, A12111,2/1976/46A/33NAA 7501151.)



A three-year-old toddler on the tarmac of Saigon airport, before being evacuated to Australia on an RAAF transport plane, 1975. (Courtesy of photographer Ian Frame and the State Library of South Australia, PRG 1420/1/10.)

[people] felt—I was disappointed, frustrated that I couldn't help them and I was certainly disappointed if they couldn't see that ... the system had limitations: "Why can't I have a baby tomorrow?"³¹

In Victoria, volunteers from ASIAC helped man the phones; in one week, volunteers dealt with 1,000 enquiries about adoption.³² Including the airlift, 115 children entered Victoria from Vietnam in the period 1974 to 1975.³³

The Council of Social Welfare Ministers (CSWM) was a national body bringing together the welfare ministers of the states and territories and their administrative officers. When the dust settled on the Babylift distribution, the CSWM worked through the state agencies to achieve two simultaneous objectives: first, to set in place a uniform administrative procedure for managing ICA across the states and territories, including an unsuccessful proposal for a national co-ordinating agency for ICA; and, second, to formalise working agreements between Australia and prospective sending countries.³⁴ Legislative reform and policy initiatives at this stage were located at the state level, through the efforts of individuals employed by state welfare departments, though endorsed by the CSWM. In 1980, a system was set in place under which each state/territory undertook responsibility for negotiating with an allocated overseas country and distributing information on standards and requirements to all other states/territories through the Welfare Administrators National Secretariat. In an initial list of ten countries, Victoria was given responsibility for Thailand.³⁵ The system was abandoned by 1983, as it had been inefficient and ineffective, with each state/territory pursuing its own practices, a situation seen by the adoption reformers of the 1980s as embodying 'a great potential for abuse'.³⁶

Despite the failure of the contact state system and of earlier attempts to establish a national agency to coordinate and manage ICA, the first of these objectives saw ICA absorbed, at least in Victoria, by a general movement towards reform of domestic adoption legislation.³⁷ This ad hoc development had the advantage of pre-empting the requirement spelled out in the UN Declaration of the Rights of the Child and later enshrined in the Hague Convention, that children adopted internationally under ICA should enjoy the same safeguards and standards as children adopted nationally.³⁸ In 1984, Victoria became the first state to enshrine this principle in legislation when the parliament introduced reformed

adoption legislation that included, for the first time, legislative provisions for ICA.³⁹ Of tremendous symbolic importance in signalling a shift away from the 'rescue' trope in ICA, at least in the 1984 Victorian act, was the provision for the placement of Australian children in overseas countries, 'subject to adequate provisions incorporated in the legislation.'⁴⁰ From the parents' point of view, the integration of ICA regulation into adoption legislation meant recognition, validation and endorsement of ICA as an adoption practice. At the same time, proponents argued that the imposition of increasingly stringent domestic adoption requirements onto ICA was hampering the adoption of children in need.

In the absence of effective formal mechanisms domestically or internationally until the mid-1980s, the actual administration of ICA seems to have bifurcated. Assessment and approval of prospective parents and the forwarding of approved files to the sending country was carried out in Victoria by Community Services Victoria (CSV) (and its various mutations); location and allocation of children was in the hands of ASIAC, through the group's direct relationships with childcare institutions and orphanages—not government agencies—in various countries. By 1983, CSWM had produced a pamphlet designed to inform overseas adoption authorities of the procedures applicable in Australia.⁴¹ Though approval of the parents rested with the state authorities, responsibility for negotiating with a recognised child welfare agency in the nominated country for the placement of a child was vested in applicants, validating and empowering the (unaccredited) parent groups as vital intermediaries in the adoption process, and allowing a loophole for privately arranged adoptions to continue.

Establishing a new program in a new country, or expanding a program, involved developing a connection with a new institution or individual (generally one with some form of approval from the government welfare agencies of that country). Adoptions were carried out under the prevailing laws and regulations of the sending countries and then validated in Australia; children were either collected by their prospective parents in the country of origin, or were escorted to Australia. In Victoria, ASIAC seems to have enjoyed a harmonious relationship with the responsible government agency and also sent representatives to the peak committees advising the government on practice and policy. ASIAC's quest for 'new programs' seems to have proceeded in tandem with efforts by the Australian Council of

Social Welfare Ministers to establish formal working arrangements with prospective sending countries.⁴² This phase of ICA was quite competitive, with private international agencies couring around South-East Asia attempting to 'capture the market'. Sending countries were as equally ill-prepared as receiving countries for this escalation of ICA.

From its inception, ASIAC conducted its adoption programs as part of a suite of child support measures that included in-country sponsorship of individual children and aid programs, both often linked to the contact institution from which adoptions also took place (a linkage later viewed as highly problematic). The group's newsletters bear witness to good intentions and a commitment to high standards, but perhaps also to the somewhat naïve idealism of these early humanitarian ventures. The personal connection with administrators and carers in sending countries reinforced the notions of reciprocity that Young ascribes to the second phase of ICA.⁴³ ASIAC effectively functioned as an intermediary between the Australian government agency (CSV in Victoria) and an institution in the sending country from which a child was allocated, offering assistance, support and advice to parents as they moved through the process. At the same time, parents frustrated by delays in the official handling of applications took advantage of gaps and loopholes in the regulation to execute private (unapproved) adoptions. Complaints clustered around the delays, but private adoptions occasioned media eruptions around ICA issues.

Phase 2: 1984–1990: Reciprocity – Government to Government

The 1980s saw the evolution of ICA into a permanent feature of international child welfare and domestic family formation.⁴⁴ It was a period of expansion in ICA globally; in Victoria, the numbers of intercountry adoption placements that were legalised in the County Court of Victoria increased from 13 in 1982–83 to 105 in 1990–91.⁴⁵

This was a time when an increased demand for services placed pressure on local authorities. Reporting to the Victorian parliament in September 1987, Minister for Community Services Caroline Hogg summarised the activities of Community Services Victoria in relation to ICA in the nine months since December 1986:

the Intercountry Adoption Service has received in excess of 2000 inquiries; invited more than 200 couples to discuss intercountry adoption issues; received 160 firm applications from couples; assessed

60 couples and approved 40 of them as prospective adoptive parents; supervised 90 children in placements; prepared 35 cases for legislation of adoption through the Victorian courts; and placed 42 children with Victorian couples.

Hogg expressed herself as well satisfied with the volume of requests and the standard of service.⁴⁶ Reflecting what seems to be an historic polarity of opinion, however, media reports found CSV to be ideologically opposed to ICA, and to be expressing that opposition through a deliberately cumbersome and time-consuming delivery of services.⁴⁷ Periodic scandals underlined individual attempts to circumvent the system.

The 1980s was also a period of more resolute action by Australian governments to impose a national code of practice that progressively confined involvement of the parent groups to support, education and consultation.

The *Report to the Council of Social Welfare Ministers and the Minister for Immigration and Ethnic Affairs of the Joint Committee on Inter-country Adoption Together with the Ministerial Response to the Report* (Layton *et al.*, 1986) represents an important milestone in the unfolding legislative history of ICA. According to the chairman of the committee, Ron Layton, the report was commissioned in May 1985 in response to ongoing criticism, both within Australia and overseas, of the way in which ICA operated, and represented an attempt 'to determine strategies for the efficient management of services with a view to enhancing a co-ordinated Commonwealth, State and Territory approach to the service'.⁴⁸ This undertaking involved the development of a plan of concerted action on the part of state and federal authorities for the management of ICA, a clear allocation of responsibilities between the Commonwealth and states and territories, the enunciation of clear and specific national domestic guidelines, and a commitment to ensure some degree of compliance to specified standards of legitimacy on the part of overseas countries. In Victoria, the *Adoption (Amendment) Bill 1987* contained provisions for the implementation of the national guidelines under Victorian legislation, as part of a recommended move towards a uniform national approach.⁴⁹ Victoria also developed its own code of practice, the *Victorian Adoption Standards* (1986), to cover both local and intercountry adoption. Other policy documents dealt

with the relationship between CSV, the federal departments and their respective obligations.

Though the Joint Committee on Intercountry Adoption attempted to resolve issues arising from the split Commonwealth and state/territory jurisdictions and allocate responsibilities for ICA, the Commonwealth declined to accept overall responsibility for the program, and the existing division of roles remained in place. The guidelines did not preclude parent groups like ASIAC from involvement in the allocation and placement of a child for adoption overseas, but they did introduce a review process, prior to the issue of a visa, in part to minimise the danger of malpractice and exploitation potentially arising from private, independent negotiations.⁵⁰ ASIAC's submission to this inquiry endorsed the need for the establishment of clear criteria for acceptable overseas agencies.

If the *Report* arose out of perceived criticisms of ICA management, the members of the joint committee were equally critical of the philosophical position of some prospective parents, as reflected in public submissions. The Committee 'was not convinced that altruism and a child centred focus are reflected in current practice'.⁵¹ Indeed, it found prevailing attitudes to reflect more parent-centred motivations: an inherent right to a child; an idea that wealth and influence could obtain a child; that a child's best interests would be served by a life in Australia (an attitude characterised by one correspondent as 'cultural imperialism'). (Demonstrating the notable persistence of themes of public rhetoric around ICA, this last claim is echoed in Tony Abbott's remark: 'I've always said to be born in Australia is to win the lottery of life and we would like to see more children be given that opportunity'.)⁵² Often such philosophies were coupled with a preparedness of couples and individuals to bypass the system.

The trigger for local legislative review in Australia was the 'Baby Kajal' case in Victoria in 1989. Though privacy issues prevent detailed discussion of the Kajal case, the extensive media coverage may be freely viewed on contemporary databases. In summary, when the mother in the family originally approved to adopt the child was discovered to be pregnant, the baby was moved, and then moved back, between two sets of adoptive parents. Both couples appealed to the courts for remedy and the whole drama was played out, step by step, in the press.⁵³ At one stage, the federal minister asserted his rights of guardianship over the child

and intervened in state government arrangements, throwing into sharp relief the problems inherent in the prevailing Commonwealth/state and territory juridical provisions. ICA as an adoptive practice came under close, and not always sympathetic, public scrutiny.

The scandal was a local one, though Boss and Edwards claim that, through it, Australia came close to alienating the Indian government.⁵⁴ In Victoria, CSV suspended processing of new ICA applications in consequence. Government statistics show that Victorian numbers did fluctuate between 1989 and 1992: 50 (1989–90), 105 (1990–91) and 67 (1991–92), but the anomaly seems to be the peak of 105, rather than the lower figures. A significant dip occurred between 1992 and 1994.⁵⁵

In the wake of the Kajal scandal, Justice Francis John Fogarty of the Family Court was commissioned to head a review of the administrative, legal and human issues surrounding ICA in Victoria. In his report, Fogarty provided a summary of how the program could be viewed at the end of the 1980s: as an adoption program (which he insisted that it fundamentally was); a humanitarian program (which it had been at first, but, increasingly, no longer was, though humanitarian motives remained part of the mix); as part of Australia's overseas aid program; and as a solution for infertile couples (an idea which he strenuously opposed). He maintained that humanitarian and fertility issues were aspects of ICA, but not defining characteristics.⁵⁶ He noted that, at a practical level, ICA was enmeshed in legislation at both state and federal levels, and in an array of guidelines and standards. Administrative powers, responsibilities and accountabilities were divided between the federal and state governments. Increasingly, international elements were being added to this mix: not only the treaties, but the laws and requirements of the countries of origin.

Fogarty asserted that the sensitivities of ICA were such that the program had to be run by governments: to ensure that the best interests of the children were the first concern, that abuses of human rights were avoided, and that accountability was ensured. Parent groups could legitimately act as advocacy, support or pressure groups, but could not be involved in any way with the processing of adoptions. Moreover, if parent groups were to be an integral part of the program, they could not at the same time support open breaches of essential aspects of the program.⁵⁷ The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) would resolve

this question through its accreditation requirements, which effectively excluded the parent groups.

Fogarty attributed the ongoing difficulties of the program to an 'unresolved controversy about its philosophic base'.⁵⁸ The notion that ICA is a humanitarian program, or that its purpose is to provide children for families (rather than families for children) leads to a conclusion that standards can be less regulated, that the children are 'lucky', and that well-intentioned applicants should be free to seek out children for themselves in overseas countries.⁵⁹ The result was a gap between community views about ICA and the views of government agencies as expressed in guidelines and procedures. Specifically, Fogarty saw confusion arising out of the imposition of a fee for service. ICA is an expensive program to administer, requiring as it does close on-the-ground liaison with agencies and individuals in countries of origin. Fees for service are necessary to help cover costs, but create ambiguity around the question of who is the client. 'The fact that the prospective parents are paying out and they are in the state and the children are not gives rise to a view that the service is for them. It is not.'⁶⁰ Fees also create expectations as to the quality and speed of service, with parents at times making unrealistic demands of professional staff. Fogarty advocated (unsuccessfully) the abolition of fees for service. To a great extent, the discrepancies of perception noted by Fogarty persist to this day; again, we catch echoes in the current discussion.

The most immediate legislative consequence of the Kajal scandal and the Fogarty review was the *Adoption (Amendment) Bill (No. 2)* of April 1991, which transferred guardianship of non-citizen children entering Victoria for the purposes of adoption from the Commonwealth minister for immigration, local government and ethnic affairs—held under the *Commonwealth Immigration (Guardianship of Children) Act* of 1946—to the director-general of Community Services Victoria.⁶¹

The pathway to reform was not, however, a smooth one. Global anxieties ran high in the wake of the abduction of children from Romania following the fall of the Ceausescu regime in 1990, a scandal in which Australia was not implicated. In 1991, however, a Victorian family became embroiled with CSV in a case which seemed to encapsulate the failings of the system, despite Justice Fogarty's optimistic conclusion, in his follow-up review of 1991, that things had improved.⁶² A couple had applied to adopt a child from overseas in 1984. They were approved in

1988 and, in January 1990, they were allocated a baby girl from India. Unfortunately, that baby died before departing for Australia. In June, CSV promised the couple the quick allocation of another baby; by September that promise had become 'by Christmas'. Meantime, with no more babies available from India, the couple transferred to the Sri Lankan program. CSV forwarded their file to an orphanage in Sri Lanka, via the Australian embassy there, thus completing the approval stage. In mid-July 1991, with no prospect of an approved allocation of a child, the couple went to Sri Lanka where they selected a baby and completed legal formalities for adoption within that country. However, CSV refused to allow them to keep the child. The couple was then faced with two options: to wait for ten months pending the placement of children with those families above them on CSV's list, or, live in Sri Lanka for a statutory twelve months, which would enable recognition of the adoption under the domicile provisions of some Australian legislation. CSV promised a review of the case in three months, but the urgent issue was what was to happen to the child.

With its evident appearance of departmental obstructionism, this was not a case to be lightly set aside by Victorian legislators currently debating the *Adoption (Amendment) Bill (No 2)* in September 1991.⁶³ Here were parents who, after attempting for more than seven years to work within the system, were driven by frustration and apparent bureaucratic stonewalling to go outside it, an action which could not be officially condoned. Debate centred on whether such delays were reasonable, efficient or humane.

Phase 3: 1990–2008—Cooperation and Compliance

Young maps her third phase across the years from 1991 to 2005, a mapping that could also be applied to Australia.⁶⁴ She discerns two contradictory tendencies globally. On one hand, there was increasing commercialisation of ICA: US internet sites advertising children; fees for services, travel and other costs; and a lack of transparency in 'fees' and 'donations'. On the other, international regulation increasingly reaffirmed a child-led approach in which ICA was a 'last resort'.

Before 2008, Australian legislative reform was on a seesaw between the need to review and revise delivery of services domestically at a state level, and the need to effect cooperation internationally—initially through working agreements between countries, then through the formal mechanisms and apparent safeguards afforded by ratification of

CRC and Hague. Tension between the two gave rise to criticisms that the application of the notion of ‘the best interests of the child’ was being used to conceal bureaucratic obstructionism and lack of support for ICA. At a practical level, pressures of compliance required a rethinking of the allocation of responsibilities between Commonwealth and states, and particularly a rationalising of the role of the Commonwealth.

Article 21(e) of the *Convention on the Rights of the Child* called for countries to establish multilateral and bilateral agreements to implement ICA safeguards, but failed to specify how this might be achieved or what form safeguards might take. Nonetheless, Australia’s ratification of CRC in December 1990 ushered in a new era in which compliance and the fulfilment of international reporting requirements dominated the national legislative agenda and, in consequence, management of ICA progressively shifted to the Commonwealth (though the administration and delivery of adoption services remained with the states). Ratification of CRC ‘obliged the Australian parliament to undertake to revise and amend laws where they contravene the provision of the Convention’.⁶⁵ Most fundamentally, this required the re-examination of the legislative applications of the paramountcy principle of the welfare and interests of the child (as consolidated in the ‘Model Bill’-based domestic adoption legislation of the 1960s).⁶⁶ Of the four core principles of the Convention—non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child—the notion of ‘the best interests of the child’ has proved most problematic juridically.⁶⁷

Internationally, CRC was seen to provide ICA with ‘a legitimate place among alternative care arrangements for children without families’.⁶⁸ Domestically, most discussion has focused on the application of the principle of ‘the best interests of the child’ in custody case law. The basic questions are: what exactly is meant, and who decides? Who speaks for the child? Boss and Edwards note that while the principle is asserted unequivocally, it is blurred and not always uniform in application.⁶⁹ In practice, all sides co-opt the ‘best-interests-of-the-child’ argument to bolster their positions. Dubinsky writes wryly of ICA, ‘The protagonists are children, but the social and political dramas they express are always created by and about adults’.⁷⁰ Boss and Edwards endorse her reading in the Australian context: negotiations and arrangements are made *about* the child, *because of* the child and *for* the child, but not *with* the child.⁷¹

Equally, one might argue that the families of origin are misty, undefined entities rendered invisible by the rhetorical emphasis on 'orphans', a descriptive category no longer sanctioned by UNICEF.⁷²

The Romanian scandals drew attention to the escalating problem of baby-trafficking and the need for uniform global standards. The *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption* (1993) was an instrument created to address this problem by specifying uniform procedures to be followed by participating countries.⁷³ In 1998, the Commonwealth government moved to implement the Convention, international legislation designed to 'refine, reinforce and augment the broad principles and norms laid down in the CRC (specifically Article 21)' and establish a global child protection mechanism for ICA.⁷⁴ These principles include ensuring that adoption is authorised only by competent authorities, that ICA enjoys the same protections and safeguards that apply in local adoptions, and that ICA does not result in improper financial gain for those involved in it. The enabling legislation required to achieve implementation included the Commonwealth Family Law amendments *Family Law (Hague Convention on ICA) Regulations* 1998, together with complementary legislation at state and territory level. In Victoria, enabling legislation was contained in the *Adoption (Amendment) Bill* (2000).⁷⁵ Changes in the composition of sending countries, and especially the emergence of China, a non-Hague signatory, as a main source for children required complementary federal legislation in the form of the Family Law amendments, *Family Law (Bilateral Arrangements—ICA) Regulations* 1998.

Clair points out that Hague does not establish a uniform adoption law; rather it sets minimum standards to be observed and proposes a system of cooperation aimed at preventing the abduction, sale or trafficking of children.⁷⁶ The provisions are meant, first and foremost, to protect children.⁷⁷ Smolin goes so far as to say that Hague was primarily an 'anti-trafficking treaty'.⁷⁸ There is an extensive literature on the shortcomings of Hague, much of it written by scholars of international law. Major flaws have been identified: weak baby-selling guidelines, a lack of mechanisms for enforcement, and ambiguous terminology that leads to non-uniformity.⁷⁹ But Hague at least attempts to establish an international benchmark for ethical ICA practice and establishes cooperation as a means of responsibility-sharing between sending and receiving countries.

Domestically, one could frame this phase around the two Memorandums of Agreement between the Commonwealth and the states/territories that eventually came to mark the end of the Commonwealth government's historical reluctance to assume real responsibility for ICA. The first, the *Commonwealth-State Agreement for the Implementation of The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 1998, came directly out of ratification of Hague and was established to appoint the Attorney-General's Department as Australia's central authority and confer legislative power from the states to the Commonwealth. The second, *Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Program*, 2008, was a renegotiation in the light of the recommendations of the 2005 House of Representatives Standing Committee on Family and Human Services (HRSCFHS) Inquiry, *Overseas Adoption in Australia*, chaired by Senator Bronwyn Bishop.⁸⁰ The Committee conducted the inquiry after reviewing the 2003–04 report of the Australian Institute of Health and Welfare, which showed that while tens of thousands of Australian children were in foster care or other forms of out-of-home care, the number of domestic adoptions in Australia had massively declined, and intercountry adoptions were the dominant form of adoption. Though nominally investigating the equitable delivery of services and benefits domestically, the inquiry was concerned with the longstanding issue of the rationalisation of responsibilities between the states and territories and the Commonwealth. The year 2005 heralded a new phase of ICA in Australia with the recommendations of the Bishop inquiry.

Phase 4: 2009 to the Present—Towards Harmonisation

Although recommendations of the 2005 Bishop inquiry were broadly accepted in principle and in detail in a ministerial response as early as 2006, they were implemented very slowly. Movement towards reform began in 2008, but it was really only the revelation of Australia's complicity in three proven cases of child trafficking from India (2008–09) that initiated real movement towards this rationalisation.⁸¹ The *Attorney-General's Department Intercountry Adoption Strategic Plan* (2009) marked the end of historically ad hoc program development by states and territories, and identified the Commonwealth as owning primary responsibility for the establishment and management of

Australia's ICA programs with other countries. The states and territories retained responsibility for the operational aspects of ICA.

Several consultative groups have been created in response to identification of problems in the 2005 HRSCFHS Report, including the National Intercountry Adoption Advisory Group and an Alternative Models Working Group. The Intercountry Adoption Harmonisation Working Group is devoted to the task of greater harmonisation of legislation, fees and administration between the states and territories, which hitherto had developed arbitrary differences in procedure, eligibility requirements and legislation.⁸²

Paradoxically, this final stage of regulatory rationalisation was achieved at a time when the numbers of children available globally for transnational adoption is in decline. One could argue, however, that this is still a timely convergence of tendencies, as the declining availability of children has not been matched by declining demand in receiving countries. An imbalance between demand and supply has always created a fertile environment in which unsanctioned activity can take place. In this highly contentious field, bureaucratic solutions can assist, but do not guarantee resolution of the oppositional views that collect around ICA.

Conclusion

Deborra-lee Furness and other advocates of a deregulated free-market approach to ICA may capture the attention of the popular media, especially women's magazines and television morning talk shows, but until Tony Abbott announced the pending review, there was no sign that they were influencing domestic policy. Presently, ICA in Australia is firmly and comprehensively under the jurisdiction of the Attorney-General's Department, and adoption programs are subjected to rigorous scrutiny. Moreover, Australia is a member of the Hague Permanent Bureau's International Advisory Group, working together with the Hague ICA Technical Assistance Program to assist countries to implement ethical and viable ICA legislation and procedures.⁸³ Nonetheless, a core problem remains, namely that 'despite firm control of Australian authorities over the regulation of domestic procedure ... their inability to guarantee the legitimacy of overseas agents establishes the risk of future cases [of child trafficking]'.⁸⁴ Ongoing revelations of malpractice highlight the difficulties of detecting abuses of the system occurring overseas. Problems exist with informed consent, especially in countries where universal literacy is not a given fact, and with accidental

mishandlings of individual cases by well-intentioned agents as in the recent example of Saroo Brierley.⁸⁵ Indeed Consuelo do Campo has criticised the Australian system's reliance on the consent processes and compliance certificates of Convention origin countries solely on the basis of their ratification of Hague.⁸⁶

The rights of birth families and the problematic nature of 'informed consent' are issues pushed even further into the background by then Prime Minister Tony Abbott's recent announcement that Australia would automatically recognise full adoptions from South Korea and Taiwan (countries from which 40 per cent of intercountry adoptions occurred in 2012).⁸⁷ Australian law allows for the conversion of 'simple' adoptions—that is, adoptions that create a legal relationship between a child and its adoptive parents while maintaining a legal relationship with the birth family—into 'full' adoptions, which sever all legal ties with the birth family in favour of the adoptive parents. Simple adoption can be revocable; full adoption is not. In Australia, the conversion required its own court procedure, now presumably no longer necessary. While this apparent 'streamlining' has been welcomed by Furness, other experts in the field have found Australia to be 'seriously at risk of conducting perfectly legal illegal adoptions'.⁸⁸

According to Australian Institute of Health and Welfare statistics, 22 intercountry adoptions were finalised in Victoria in the year 2013–14 (compared to 24 in 2012–13, a steady decline from the highpoint of 132 in 2004–05) out of a national total of 114 (also a decline from 138 in 2012–13). But as Dubinsky and other scholars have pointed out, intercountry adoption is an area in which the significance and importance of the issues involved far outweighs a mere reckoning of numbers. In terms of engagement with issues, Victoria has been a lead state within the Australian federation in both initiating legislation and undertaking reform. The 2013 national apology to those affected by forced adoption has opened a new debate domestically as to whether ICA perpetuates practices no longer tolerated in local adoption in the first world, specifically in the three areas of relinquishment, rights to information and contact with birth families.⁸⁹ A 2010 Protocol from the Australian Attorney-General's Department would seem to be directly addressing these concerns.⁹⁰ Debates on these and other problematic aspects of ICA continue to dominate the local and international literature at a time when the practice itself appears to be in decline.

Notes

- 1 The opening quote is from Peter Fopp, interviewed by Joshua Forkert, Adelaide, 15 July 2009. We thank Joshua Forkert for access to the transcript.
- 2 The report, released 7 April 2014, may be found at <https://www.dpmc.gov.au/report-interdepartmental-committee-intercountry-adoption>, accessed 7 April 2015. On 17 June 2014, the Senate referred resulting legislation to its Legal and Constitutional Affairs Legislation Committee for inquiry and report. The purpose of the legislation was to amend the *Australian Citizenship Act 2007* to provide access to citizenship for children adopted by Australian citizens through bilateral arrangements made by Australia with specific countries that are not parties to the Hague Convention on Protection and Co-operation in respect of Intercountry Adoption. The *Australian Citizenship Amendment (Intercountry Adoption) Bill 2014* was passed by the Senate on 9 February 2015.
- 3 Jonathan Swain, 'PM Tony Abbott Pledges to Ease the Way for Overseas Adoption after Campaign by Actor Deborah-lee Furness and husband Hugh Jackman', *Sydney Morning Herald*, 19 December 2013, <http://www.smh.com.au/federal-politics/political-news/pm-tony-abbott-pledges-to-ease-the-way-for-overseas-adoption-after-campaign-by-actor-deborralee-furness-and-husband-hugh-jackman-20131219-2zmlw.html>, accessed 7 April 2015. Prompt action saw the passing of the *Family Law (Bilateral Arrangements—Intercountry Adoption) Amendment (2014 Measures No. 1) Regulation 2014*, which allowed immediate recognition of some then not-finalised adoptions from Ethiopia and Taiwan (non-Hague countries).
- 4 These features of ICA were noted in 1989 by Mr Justice JF Fogarty, K Sanders, and M Webster, *A Review of the Intercountry Adoption Service in Victoria*, Melbourne, Victorian Family and Children's Services Council, 1989, pp. 38f.
- 5 Fogarty *et al.*, p. 66.
- 6 Karen Dubinsky, *Babies without Borders: Adoption and Migration across the Americas*, New York, New York University Press, 2010.
- 7 Siobhan Clair, 'Child Trafficking and Australia's Intercountry Adoption System', Research Paper, Brisbane, University of Queensland Human Trafficking Working Group, 2012, www.law.uq.edu.au/humantrafficking, accessed 7 April 2015.
- 8 Joshua Forkert, 'Orphans of Vietnam: A History of Intercountry Adoption Policy and Practice in Australia, 1968–1975', PhD thesis, University of Adelaide, 2012, p. 136, n. 72.
- 9 Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Family and Human Services 2005, *Overseas Adoption in Australia: Report on the Inquiry into Adoption of Children from Overseas*, Canberra, Commonwealth of Australia, 2005, pp. 6–8.
- 10 For an historical summary of ICA practice in Australia, see Chapter 5, 'The Rise and Fall of Intercountry Adoption', in Marian Quartly, Shurlee Swain and Denise Cuthbert, *The Market in Babies: Stories of Australian Adoption*, Clayton, Monash University Publishing, 2013, pp. 102–27.
- 11 For an overview of the Australian and international scholarly discussion of sociological issues relating to ICA, see Indigo Willing, Patricia Fronek and Denise

- Cuthbert, 'Review of Sociological Literature on Inter-country Adoption', *Social Policy and Society*, vol. 11, no. 3, 2012, pp. 465–79.
- 12 For example, David M Smolin, 'Inter-country Adoption and Poverty: A Human Rights Analysis', *Capital University Law Review*, no. 36, 2007, pp. 413–53.
 - 13 United Nations, *Report of the European Seminar on Inter-Country Adoption*, Leysin, Switzerland, 22–31 May 1960. The 'Leysin principles' emerged from a seminar on ICA organised under the auspices of the European Office of the United Nations in Leysin, Switzerland. The Leysin principles were the first set of principles to be formulated in the ICA sphere. Revised several times since, they are the basis of all subsequent national instruments dealing with ICA. For a summary of key points as revised and presented to the UN in 1985, see Christopher Bagley, 'Adoption of Native Children in Canada: A Policy Analysis and a Research Report', in Howard Alstein and Rita J Simon (eds), *Inter-country Adoption: A Multinational Perspective*, New York, Praeger, 1991, p. 73.
 - 14 See, for example, RAC Hoksbergen and J ter Laak, 'Changing Attitudes of Adoptive Parents in Northern European Countries', in D Brodzinsky and J Palacios (eds), *Psychological Issues in Adoption: Research and Practice*, Westport, Praeger, 2005, pp. 27–46 (parent motivation); Alexandra Young, 'Developments in Inter-country Adoption: From Humanitarian Aid to Market-driven Policy and Beyond', *Adoption & Fostering*, vol. 36, no. 2, July 2012, pp. 67–78 (for historical and social circumstances).
 - 15 For immigration, see Kirsten Lovelock, 'Inter-country Adoption as a Migratory Practice: A Comparative Analysis of Inter-country Adoption and Immigration Policy and Practice in the United States, Canada and New Zealand in the Post W.W. II Period', *International Migration Review*, vol. 34, no. 3, Autumn 2000, pp. 907–49; for nation-building, see Kate Murphy, Sarah Pinto and Denise Cuthbert, "'These infants are future Australians": Making the Nation through Inter-country Adoption', *Journal of Australian Studies*, vol. 34, no. 2, 2012, pp. 141–61.
 - 16 'Australian Families Caught up in India', *ABC News*, 23 February 2009, <http://www.abc.net.au/news/2009-02-22/australian-families-caught-up-in-india-adoption/304668>, accessed 7 April 2015.
 - 17 For the voices of Australian adoptees, see Margaret Taft, Kay Dreyfus, Marian Quartly and Denise Cuthbert, "'I knew who I was not, but not who I was": Public Storytelling in the Lives of Australian Adoptees', *Oral History* (UK), vol. 41, no. 1, 2013, pp. 73–83; see also stories and articles collected on the Monash History of Adoption Project website, <http://artsonline.monash.edu.au/historyofadoption/adoption-stories/>, accessed 7 April 2015.
 - 18 Young, *passim*.
 - 19 Patricia Fronek, 'Operation Babylift: Advancing Inter-country Adoption into Australia', *Journal of Australian Studies*, vol. 36, no. 4, 2012, pp. 445–58; Forkert, 'Orphans of Vietnam', *passim*.
 - 20 See David Hamblly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Western Australia Law Review*, vol. 8, no. 3, June 1968, pp. 281–318.
 - 21 Quartly *et al.*, p. 3.
 - 22 Forkert, pp. 143–5.

- 23 Forkert, p. 120. This quote and information in the following paragraphs are from an interview with Moir and the recipient families. 'Out of the Storm', *Australian Women's Weekly*, 21 June 1972, pp. 4–5.
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- 26 Gregory *et al.*,, p. 2.
- 27 'President's report', *ASIAC Newsletter*, June 1979.
- 28 'President's report', *ASIAC Newsletter*, June 1979.
- 29 Forkert, p. 175, citing *Sydney Morning Herald*, 22 April 1995.
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- 31 Peter Fopp interviewed by Joshua Forkert, 15 July 2009, see Quartly *et al.*,, p. 110.
- 32 'President's report', *ASIAC Newsletter*, June 1979.
- 33 *Report to the Council of Social Welfare Ministers and the Minister for Immigration and Ethnic Affairs of the Joint Committee on Intercountry Adoption together with the Ministerial Response to the Report* (Layton), September 1986, p. 97.
- 34 Gregory *et al.*, pp. 3–4; Peter A. Fopp, 'Outline of working arrangements between the State and Territory Adoption Authorities of Australia and the Director of Public Welfare of (country), to facilitate the adoption of (country) children by Australian applicants who have been approved for that purpose', in P. A Fopp, 'Working arrangements for inter-country adoptions: State and Commonwealth Officers Meeting, Adelaide, 10 March 1978' (Attachment 2, pp. 6–10) (national agency); [PA Fopp,], Report Australian delegation on inter-country adoption to certain Asian countries, December, 1978; PA Fopp, Report [to the Permanent Heads of the Australian States and Territories Social Welfare Departments] of the 1979 Australian Intercountry Adoption Delegation, December 1979 (working agreements).
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- 37 Gregory *et al.*, p. 2: The proposal was rejected by a meeting attended by State and Australian government representatives and the convenor of the Victorian sub-committee in July 1974 (that is, before the Babylift); Davey *et al.*, pp. 207f.
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- 39 Pauline Toner (Minister for Community Welfare Services), 'Adoption Bill', Assembly, *Hansard*, 2 May 1984, pp. 4243–55, and esp. pp. 4252–3.
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 - 42 Fopp, Reports, 1978 and [1979].
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 - 48 Cover letter from Ron Layton, Chairperson, to the Federal Ministers for Immigration and Ethnic Affairs and Community Welfare, 1 September 1986.
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 - 50 Layton *et al.*, 1986, p. 5.
 - 51 Layton *et al.*, 1986, pp. 31–2.
 - 52 Rick Morton, 'Tony Abbott Announces Adoption Taskforce, Backed by Furness, Jackman', *The Australian*, 19 December 2013, <http://www.theaustralian.com.au/national-affairs/tony-abbott-announces-adoption-taskforce-backed-by-furness-jackman/story-fn59niix-1226786541811>, accessed 7 April 2015.
 - 53 Beth Wilson, 'Treating People like Babies: Intercountry Adoptions. The Baby Kajal Case and Bureaucratic Interference with Parents' Rights', *Legal Service Bulletin*, vol. 14, no. 4, August 1989, pp. 188–90; Terry Carney, 'Overseas Adoptions: The Best Interests of the Child in Solomon's Jungle', *Legaldate: Legal Date Supplement*, June 1989 [no page numbers].
 - 54 Boss & Edwards, p. 15.
 - 55 For a national summary 1987–2005, see *Adoptions Australia 2010–2011*, Canberra, Australian Institute of Health and Welfare, 2011.
 - 56 Fogarty *et al.*, p. 40.
 - 57 Fogarty *et al.*, pp. 43, 86 & 88.
 - 58 Fogarty *et al.*, p. 66.
 - 59 Fogarty *et al.*, p. 41.

- 60 Fogarty *et al.*, pp. 41–2.
- 61 Kay Setches, Minister for Community Services, ‘Adoption (Amendment) Bill (No. 2), Second Reading’, Legislative Assembly, 7 May 1991, *Hansard*, p. 1840.
- 62 Justice JF Fogarty, *The Intercountry Adoption Service in Victoria: A Follow Up Review*, Melbourne, Victorian Family & Children’s Services Council, 1991. The name of the family is omitted for considerations of privacy, though the case was well publicised in the press.
- 63 Rosemary Varty (Member for Nunawading), ‘Adoption (Amendment) Bill (No 2) Second Reading’, Legislative Council, 17 September 1991, *Hansard*, p. 310, citing *Sunday Age*, 15 September 1991.
- 64 Young, pp. 73–4.
- 65 J Neville Turner, ‘Rights of the Child under UN Convention’, *Law Institute Journal*, no. 66, January 1992, p. 40.
- 66 For a review of Australian adoption legislation following ratification of CRC, see Boss and Edwards, 1992.
- 67 Jonathan Crowe & Lisa D Toohey, ‘From Good Intentions to Ethical Outcomes: The Paramountcy of Children’s Interests in the *Family Law Act*’, *Melbourne University Law Review*, no. 33, 2009, pp. 391–414.
- 68 Helen Bayes, ‘Protecting Rights, Preventing Wrongs in Intercountry Adoption’, Proceedings of the 1st AICAN Conference, Monash University, Melbourne, Australia, 22–24 January 1993 [no page numbers].
- 69 Boss & Edwards, pp. 24 & 4.
- 70 Dubinsky, p. 7.
- 71 Boss & Edwards, p. 43.
- 72 See, for example, <http://www.unicef.org/graca/alone.htm>, accessed 7 April 2015.
- 73 Chantel Ryan, ‘Intercountry Adoption: Past, Present and Future Concerns Regarding its Existence and Regulation’, Working Papers, *Australian Journal of Gender and Law*, no. 1, 2008, p. 133.
- 74 See Clair, p. 10; see also Jennifer Degeling, ‘Intercountry Adoption—a New Convention for Australia?’ *Australian Law Librarian*, vol. 1, no. 5, 1993, p. 214.
- 75 Legislative Council, 12 April 2000, *Hansard*, 705. A summary may be found in the Parliament of Victoria, *Alert Digest*, no. 5, 2 May 2000.
- 76 Clair, pp. 10–11.
- 77 UNICEF, May 2010, from the Australian A-G website, ‘Summary table, investigation into possible new programs, Attachment A’, accessed June 2013.
- 78 David Smolin, ‘Child Laundering and The Hague Convention on Intercountry Adoption: The Future and Past of Intercountry Adoption’, *University of Louisville Law Review*, no. 441, 2010, p. 452. Smolin has written extensively on the social, human and legal effects of transnational adoption.
- 79 Ryan, pp. 172f.

- 80 *Overseas Adoption in Australia*, 2005, Appendix G (1998), <http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Program.pdf> (2008) <http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Pages/Australiasintercountryadoptionssystem.aspx>
- 81 Clair, pp. 4–5.
- 82 Clair, p. 19 & note 140.
- 83 In partnership with individuals and organisations on the ground, ICATAP develops solutions to address local needs. Assistance might involve providing advice on legislation, structural organisation and capacity building; identifying and overcoming bad practices, such as selling babies for adoption; and training people in the adoption procedure, and in the child protection system in general. Two major ICATAP projects, in Guatemala and Cambodia, have produced positive results. Australia was an active partner in the Cambodian project. http://www.hcch.net/index_en.php?act=text.display&tid=29.
- 84 Clair, p. 23.
- 85 Saroo Brierley, *A Long Way Home*, Melbourne, Penguin Books, 2013.
- 86 Consuelo do Campo, 'Perfectly Legal Illegal Adoptions: A Critical Examination of Australia's Approach To Duly Informed Consent when Converting Adoptions under the Hague Convention on Intercountry Adoption', Honours Thesis, ANU College of Law, 2013, pp. 8–9. See also Office of the Prime Minister, 4 March 2014, 'Automatically Recognising Overseas Adoptions from Taiwan and South Korea', <http://www.pm.gov.au/media/2014-03-04/automatically-recognising-overseas-adoptions-taiwan-and-south-korea>, accessed 7 April 2015.
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- 88 See do Campo, p. 1 (citing Hervé Boéchat, ICA expert at International Social Service, Geneva) & p. 6 (simple and full adoptions explained).
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- 90 Attorney-General's Department, *Protocol for Responding to Allegations of Child Trafficking in Intercountry Adoption: Information to Assist Adoptive Families and Adoptees*, 2010, [http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Protocol%20for%20responding%20to%20allegations%20of%20child%20trafficking%20in%20intercountry%20adoption%20\[PDF%20123KB\].pdf](http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Protocol%20for%20responding%20to%20allegations%20of%20child%20trafficking%20in%20intercountry%20adoption%20[PDF%20123KB].pdf), accessed 7 April 2015.